

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-19183

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In The
UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA ex rel.
WILLIAM PIPER,

Appellant,

vs.

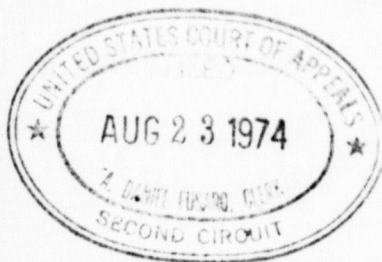
PAUL J. REGAN, Chairman, New York
State Board of Parole and HONORABLE
R.J. HENDERSON, Superintendent of
Auburn Correctional Facility,

Appellees.

APPELLANT'S APPENDIX

Raymond Fitzgerald
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Louis J. Lefkowitz
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State of New York
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FILED
JUL 5 1974
LAWRENCE E. FERGUSON, JR.
ATTORNEYS
SECOND CIRCUIT

TITLE OF CASE

Relator

For plaintiff:

William Piper
135 State Street
Auburn, New York 13021

HONORABLE PAUL J. REGAN, Chairman,
New York State Board of Parole;
and HONORABLE R. J. HENDERSON,
Superintendent of Auburn Correctional
Facility.

Respondent

For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
Petition for Writ of Habeas Corpus	Witness fees				
Action arose at:	Depositions				
		1a			

DOCKET ENTRIES

2a

AFFIDAVIT OF PIPER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA ex rel.
WILLIAM PIPER,
Relator,

-against-

HONORABLE PAUL J. REGAN,
Chairman, New York State Board
of Parole; and, HONORABLE R.J.
HENDERSON, Superintendent of
Auburn Correctional Facility,

Respondent.

-----x

STATE OF NEW YORK)
) ss.;
COUNTY OF CAYUGA)

William Piper, being duly sworn, deposes
and says:

1. That he is the above entitled relator and
makes this affidavit in support of a motion to proceed
in forma pauperis with his application for a writ of
habeas corpus.

2. That he is a citizen of the United States of
America.

3. That, due to his poverty he is unable to
pre-pay the costs or fees incurred in this action.

AFFIDAVIT OF PIPER

4. That, he is unable to pay the costs for retaining counsel to present his application before this court and does therefore submit same pro se.

5. That, he believes he has a just cause for action and is entitled to the relief he seeks in this action.

Wherefore, relator prays that this Court grant him permission to proceed in forma pauperis with this application and if deemed necessary, that this Court will assign counsel to brief and argue same before this Court.

Relator

Sworn to before me this
26th day of March, 1974

ELAINE A. GRAVES.
Notary Public

APPLICATION FOR WRIT OF HABEAS CORPUS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.,
WILLIAM PIPER,

74 Civ.

Relator,

-against-

APPLICATION FOR A
WRIT OF HABEAS
CORPUS

HONORABLE PAUL J. REGAN,
Chairman, New York State Board
of Parole; and, HONORABLE R.J.
HENDERSON, Superintendent, Auburn
Correctional Facility,

28 U.S.C. 2241
et seq.

Respondents.

To: THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK:

The petition of William Piper for a writ of habeas
corpus respectfully shows to this Court and alleges:

FIRST: That he is the above entitled relator,
the person on whose behalf this application is made.

SECOND: That the said William Piper is imprisoned
and restrained of his liberty at the Auburn Correctional
Facility and the Officers or persons by whom he is
so imprisoned are Paul J. Regan, Chairman, New York
State Board of Parole and R.J. Henderson, Superintendent
of Auburn Correctional Facility.

APPLICATION FOR WRIT OF HABEAS CORPUS

THIRD: That the said William Piper is not committed or detained by virtue of any process or mandate issued by any court of the United States or by any judge thereof; nor is he incarcerated or detained by virtue of any final judgment or decree or by the final order of any tribunal of competent jurisdiction in accordance with the Constitution of the United States.

FOURTH: That the jurisdiction of this Court to hear and determine the issues presented herein is founded upon Title 28 of the United States Code, Section 2241 et seq. as passed upon in U.S. ex rel. Johnson v. Chairman, New York State Board of Parole, 363 F. Supp. 416 (9/13/73).

FIFTH: That the cause or pretense of imprisonment and restraint according to the best knowledge and belief of your relator, is as follows:

- a) On or about the 17 day of February, 1971, relator was sentenced to an indeterminate term of six (6) years imprisonment by the Honorable Douglas F. Young, County Court, Nassau County New York.
- b) That during January of 1972 the New York State Board of Parole set relator's minimum term of

APPLICATION FOR WRIT OF HABEAS CORPUS

imprisonment at two years six months to get a program within the corrections system.

c) That after the expiration of this period of time relator appeared before said Parole Board during August of 1973, at which time he was ordered held an additional three months in order to secure a parole release program, institutional progress evaluation report and a psychiatric report on his readiness for release in accordance with New York State Law.

d) That on or about September 6, 1973, relator was notified that he was to appear before the September 1973 Board of Parole.

e) That on or about September 8, 1973 he was notified that his scheduled appearance before the Parole Board had been cancelled.

f) That on or about September 10, 1973, upon personal inquiry, relator was informed by Correctional Lieutenant Fox that the Senior Facility Parole Officer, Mr. Wayne Gaffney, stated that relator had been removed from the Parole Board appearance list because he had not yet been interviewed by a psychiatrist.

APPLICATION FOR WRIT OF HABEAS CORPUS

- g) That on or about November 4, 1973 relator was interviewed by two (2) psychiatrists, Doctors Luger and Licette.
- h) That on or about November 6, 1973 relator appeared before the Parole Board and was notified that he was to be held for an additional twelve (12) months and reappear before the November 1974 Parole Board.
- i) That prior to relator's appearance before the November 1973 Parole Board, Mr. Donald Bryette, Parole Officer at the Auburn Correctional Facility notified relator that his residence and employment had been approved and that he had received five reasonable assurance job offers for processing.
- j) That relator was further informed that the State Parole Investigator had approved the employment and residence submitted and parole now was dependent upon relator's institutional record and the psychiatric report.
- k) That a report favoring release was submitted by the psychiatrists and relator's institutional achievements during incarceration was: Completion of a Science Course; Completion of a Typing

APPLICATION FOR WRIT OF HABEAS CORPUS

and Consumer Education Course; and, was presently enrolled in the Evening Music Appreciation Class.

l) That in addition to these achievements, relator participated in JayCee Committee work, Counselling and a Music Work Shop. He is deeply involved in the Facility Drug abuse program, Bible and York-fellow Religious programs.

m) That Mr. James A. Smith, Jr. of the Auburn Prison Project staff along with his assistants, Mr. John Zenor and Julian Eule submitted reports favoring release on parole of relator because of his progress and understanding of the cause of his present involvement and reason for incarceration. They were of the opinion that relator was an excellent prospect for parole.

n) That relator has caused no disciplinary problems during the period of his incarceration and his present confinement is the first conviction for a violation of the criminal law.

o) That in accordance with U.S. ex rel Johnson v. Chairman, N.Y.S Board of Parole, 363 F. Supp. 416 as cited below, relator is entitled to relief on this application.

APPLICATION FOR WRIT OF HABEAS CORPUS

"To make such a claim (Parole board policy of non-disclosure) in this Court petitioner need not first exhaust his state remedies. He has, in his contention, already been subjected to the deprivation complained of and that the state might afford him a remedy in its courts is beside the point." at p. 417 of Houghton v. Scranton, 392 U.S. 639, 88 S. Ct. 2119; Smartt v. Avery, 320 F. 2d 788.

"Whether or not the Board of Parole must be allowed a wide range of judgment, and must be empowered to make determinations that respond individually to the immense variety and complexity of the human situations that the Board is required to consider and to shape, the Board remains a body of public officers charged with a specific statutory responsibility toward prisoners. The prisoners parole interests imply procedural rights that are real, and at minimum entitle the prisoner to relief against demonstrable discrimination, or abuses of discretion, or the introduction into parole decision making of illicit considerations." at 418.

APPLICATION FOR WRIT OF HABEAS CORPUS

p) That relator applied in the State Supreme Court of Cayuga County for relief in an Article 78.00 proceeding which resulted in the following memorandum:

"Petitioner, an inmate of Auburn Correctional Facility, has presented his petition sworn to January 22, 1974, whereby he seeks an order in this Article 78 proceeding directing respondents to notify petitioner of the reason why he was denied parole in November, 1973, and, instead, held for reconsideration of parole at the November, 1974, meeting of the Parole Board.

The determination of the Parole Board in granting or withholding parole is a judicial function and, according, not reviewable if done according to law. (Corr. Law. §212, subd. 10). There being no law requiring the board to specify its reasons for withholding parole, petitioner has no clear legal right to the relief sought.

Nevertheless, the court notes that the respondent Regan's letter to petitioner, dated November 29, 1973, attached to the petition, does appear to advise petitioner as to why parole reconsideration is being presently deferred.

Accordingly, the application is denied and judgment is directed dismissing the proceeding.

dated: February 21, 1974.

/s/ Arthur Ervin Blauvelt

Justice Supreme Court

APPLICATION FOR WRIT OF HABEAS CORPUS

q) That the letter referred to above stated as follows: "I wish to most certainly assure you, however, that the action taken by the Board of Parole was definitely in your best interest, and in fact this was the sole determinant factor in holding you for an additional year. After an extensive perusal and review of your entire record the Board of Parole deliberated your case situation, and unanimously agreed that the additional months within the institutional program would assist you further with regard to the rehabilitative program, and indeed have a deciding effect upon your future." /s/ Paul J. Regan.

While this letter appears to satisfy the requirements of informing an inmate of what he is to do to gain parole, in reality, it says nothing whatsoever as to what programs relator should take. He has participated seriously in every program that he felt would benefit him. That if he just joined a program simply to join, he would be the recipient of nothing.

r) That the conclusion of Johnson v. Chairman, supra, gives with clarity, what the duties of the Parole Board are:

APPLICATION FOR WRIT OF HABEAS CORPUS

"Effective judicial review to assure that the prisoner is not denied his conditional 'rights' without due process, however, requires a statement of the ground of any decision denying parole, for only in that way can the reviewing court determine whether or not the decision is without foundation in fact, or is discriminatory, or is infected by reference to factors that may not be properly considered." cf. Paszel v. Laird, 426 F. 2d 1169, 1175; U.S. v. Lenhard, 437 F. 2d 936. And only if a statement of reason is given can the denial of parole serve its legitimate function, to direct the prisoner toward effective rehabilitative effort, and avoid becoming meaningless and unenlightening castigation." at 418.

"xxxthe Board must, however briefly, state the ultimate ground of its decision denying parole with sufficient particularity to enable the prisoner to understand how he is expected to regulate his conduct and enable a reviewing court to determine whether inadmissible factors have influenced its decision, and to determine whether discretion has been abused." at p. 419.

SIXTH: That, no application for the relief sought herein has been made in any federal court under the constitutional deprivation claimed. That relator believes he is entitled to the relief sought.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue directed to respondents, or whosoever has custody of William Piper, the relator

APPLICATION FOR WRIT OF HABEAS CORPUS

herein, commanding him to produce the body of the
said William Piper before this Court so that this
Court may inquire into the legality of his detention.

Dated: March 26, 1974

Relator

APPLICATION FOR WRIT OF HABEAS CORPUS

STATE OF NEW YORK)

ss.:

COUNTY OF CAYUGA)

William Piper, being duly sworn, deposes and says, that he is the relator herein, has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein to be alleged on information and belief, and that as to those matters he believes it to be true.

Relator

Sworn to before me this 26
day of March, 1974

Elaine A. Graves

Notary Public

APPLICATION FOR WRIT OF HABEAS CORPUS

STATE OF NEW YORK

ss

COUNTY OF CAYUGA

PROOF OF SERVICE AFFIDAVIT

William Piper, being duly sworn, deposes and says, that he has forwarded, on the 26 day of March, 1974, one copy of the attached application for a writ of habeas corpus to the office of the Attorney General for the State of New York at his office in the following manner:

Attorney General of N.Y.
Metcalf Building
Auburn, New York

Additionally, two copies of this application were forwarded to this Court.

Relator

Sworn to before me this 26
day of March, 1974

Elaine A. Graves
Notary Public

APRIL 5, 1974 DECISION AND ORDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, ex rel.
WILLIAM PIPER,

Relator,

-against-

HONORABLE PAUL J. REGAN, CHAIRMAN, New
York State Board of Parole; and
HONORABLE R.J. HENDERSON, Super-
intendent of Auburn Correctional
Facility,

74-CV-

Respondent.

-----x
EDMUND PORT, Judge

Memorandum-Decision and Order

The Clerk of the court has sent to me for my consideration a petition for a federal writ of habeas corpus together with an affidavit in forma pauperis and for the assignment of counsel from a state inmate presently confined in the Auburn Correctional Facility, Auburn, New York.

APRIL 5, 1974 DECISION AND ORDER

The sole contention made is that relator was denied parole on or about November 6, 1973 and was ordered held for an additional twelve (12) months, to appear before the November 1974 Parole Board. Relator mentions that he brought the same claim before the State courts and that the same was denied in an Article 78 proceeding in the Cayuga County Supreme Court by the Hon. Arthur Ervin Blauvelt on February 21, 1974. No mention is made as to when the final order thereon was entered; whether the time to appeal has run; or, in fact, whether or not an appeal is pending.

The petition herein should be denied and dismissed for the failure to allege or demonstrate the exhaustion of available state court remedies, on appeal, and for the further failure to allege or state a claim upon which relief can be granted.

For the reasons herein, it is

ORDERED, that the petition herein be and the same hereby is denied and dismissed. Leave to proceed

APRIL 5, 1974 DECISION AND ORDER

in forma pauperis is granted and the Clerk is directed to file the papers herein without the payment of fees.

United States District Judge

Dated: April 5, 1974.
Auburn, New York.

APRIL 9, 1974 JUDGMENT

JUDGMENT ON DECISION BY THE COURT CIV 32 (7-63)

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF
NEW YORK

CIVIL ACTION FILE NO. 74-CV-154

UNITED STATES OF AMERICA ex rel
WILLIAM PIPER Relator

vs.

JUDGMENT

HONORABLE PAUL J. REGAN, Chairman
of New York State Board of Parole;
and HONORABLE R.J. HENDERSON,
Superintendent of Auburn Correctional
Facility,

Respondent.

This action came on for consideration before
the Court, Honorable Edmund Port, United States
District Judge, presiding, and the issues having
been duly considered and a decision having been
duly rendered.

It is Ordered and Adjudged

Petition for Writ of Habeas Corpus is denied
and dismissed.

Dated at Utica, New York, this 9th day of April,
1974.

Clerk of Court

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, ex rel.,
WILLIAM PIPER,

-against-

HONORABLE PAUL J. REGAN, Chairman,
New York State Board of Parole;
and, HONORABLE R.J. HENDERSON,
Superintendent of Auburn Correctional
Facility,

Notice of
Motion

Respondents.

-----x

SIRS:

PLEASE TAKE NOTICE, that upon the attached
affidavit of William Piper, duly sworn to on the
19 day of April, 1974 relator does move for
reargument of his application for a federal writ
of habeas corpus on the grounds and for the
reasons stated in his original application and
the attached affidavit.

Please take further notice, that relator asks
that in the event that this Court declines re-
argument and the issuance of a writ of habeas
corpus and the relief sought, that a Certificate

NOTICE OF MOTION

of Probable Cause issue to enable this issue
which is in conflict with another Federal Court
be resolved by the Circuit Court of Appeals.

Yours,

William Piper #63326
135 State Street
Auburn, New York

To: Edmund Port, U.S.D.J.
c/o Clerk, U.S. Dist. Ct.
Auburn, New York 13021

N.Y.S. Attorney General
Metcalf Bldg.
Auburn, New York

AFFIDAVIT OF PIPER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA ex rel.,
WILLIAM PIPER,

Relator,

-against-

AFFIDAVIT

HONORABLE PAUL J. REGAN, Chairman,
New York State Board of Parole; and,
HONORABLE R.J. HENDERSON, Super-
intendent of Auburn Correctional
Facility,

Respondents.

-----x

STATE OF NEW YORK:

ss.:

COUNTY OF CAYUGA

William Piper, being duly sworn deposes and
says:

FIRST: that he is the relator herein and submits
this affidavit in support of a motion for reargument
of the Order of Judge Edmund Port, dated April 5,
1974, which dismissed an application for relief
from illegal detention by State authorities.

SECOND: That on the 15 day of March, 1974 an Order
was signed by Justice A.E. Blauvelt, Cayuga County
Supreme Court denying relief.

AFFIDAVIT OF PIPER

Further, there being no avenue of relief available, for the decision of the Parole Board is not appealable nor is any decision denying relief on grounds that under State Law, Parole Board decisions cannot be appealed, further relief must be sought in the Federal system. (See, U.S. ex rel. Johnson v. Chairman N.Y.S. Board of Parole. 363 F. Supp. 416)

THIRD: That, the decision of the various Federal District Courts cited in petitioner's original application clearly show that the claim presented by him does warrant relief under the Federal Constitution and the fruitless application for relief in a state court is unnecessary under the circumstances presented herein.

FOURTH: That, the purpose of parole is to rehabilitate a prisoner and unless the prisoner knows how he is to direct his energies he cannot travel down the correct path.

Therefore, if this Court is of the opinion that it cannot grant relief, even though there is no avenue of relief for relator within the State Judicial system, he respectfully requests the issuance of a Certificate

AFFIDAVIT OF PIPER

of Probable Cause and the assignment of counsel in order that the Circuit Court of Appeals may resolve the conflict between the Federal District Courts in and for the State of New York which have resulted in a situation whereby a prisoner in New York State's Green Haven Facility can secure relief in a Federal District Court on the issue presented herein and a prisoner in New York State's Auburn Facility is unable to secure relief.

WHEREFORE, in the interest of consistent Federal Constitutional interpretations of the rights of a State Prisoner, relator respectfully prays that this Court grant the relief sought in the original application or, in the interest of equality, that a certificate of probable cause be issued that the issue may be resolved by the Circuit Court of Appeals in and for the Second Circuit.

WILLIAM PIPER, pro se

State of New York
Auburn Correctional Facility
Sworn to before me this 19
day of April, 1974

Notary Public

APRIL 24, 1974, DECISION AND ORDER

MOTION FOR RECONSIDERATION

The decision dated April 5, 1974 in the within matter has been reviewed.

The within application for a reconsideration of the decision dated April 5, 1974 in the within case is denied.

The application for a Certificate of Probable Cause to appeal from the said decision is hereby denied as not raising substantial questions to be determined on appeal. All other relief requested is denied.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

Dated: April 24, 1974
Auburn, New York